Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 69 of 2001
(Old No. 221/1993)

The Commissioner of Sales Tax,
Uttar Pradesh, Lucknow

……. Applicant/Revisionist

Versus

M/s Mahabir Industries
Sitarganj (Khatima)
District Nainital.

……. Opposite Party

Shri Sayeed Nadem, Learned Standing Counsel for the revisionist.
None for the respondent / opposite party.

Hon'ble Prafulla C. Pant, J.

This revision, preferred under Section 11(1) of the U.P. Sales Tax Act, 1948, was originally filed by the Commissioner of Sales Tax, Uttar Pradesh, before the Allahabad High Court in the year 1993 and received by this Court on transfer under Section 35 of the U.P. Reorganization Act, 2000, for its disposal.

2) The revision is directed against the order dated 30.09.1993 passed by Sales Tax Tribunal, Haldwani, in second appeal Nos. 78 of 1991 and 77 of 1991. The revision involves following question of law:

"Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal was justified in setting aside the penalty order passed under Section 15A(1)(l) of the U.P. Sales Tax Act, 1948, despite the fact that the dealer had deliberately issued false Form 3G(2) to the purchasers?"

3) Heard learned Standing Counsel appearing on behalf of the revisionist. No one turned up on behalf of the assessee, even after service of notice.

4) The assessee is a dealer of paddy, who does the business of manufacturing and sale of rice, after purchasing paddy. In the process of manufacturing of rice, he also manufactures rice polish and chaff. This revision pertains to the assessment year 1985-86. The assessee has been issued by the Department exemption certificate under Section 4-A and 4-B of the aforesaid Act. As such, he was exempted from the payment of tax being the new unit in the State. However, the assessee, being an exempted unit was not competent to issue Form 3G(2) to the purchasers, as issuance of such Form would have further exempted the purchasers from the liability of the tax. Had the assessee been the unit, who had made payment of sales tax, such Form 3G(2) could have been issued. But the action on the part of the assessee detected by the Department attracted the penalty under Section 15A(1)(1). Learned Tribunal in the discussion in the impugned judgment has mentioned that act on the part of the assessee does attract the penalty under Section 15. Still the Tribunal has opined that the

penalty imposed is not justified. The view taken by the Tribunal is against the law. When it is clear that the assessee did issue false Form 3G(2) and consequently he did invite penalty under Section 15A(1)(1), the Tribunal cannot hold that the penalty imposed by the Department was wrong merely on the ground that the Department did not actually incur the loss after the issuance of false Form 3G(2) was detected. Had the illegal act on the part of the assessee not detected, he would have been successful in getting evaded sales tax, payment of which was liable to be made by the purchasers in second sale.

5) For the reasons as discussed above, this Court is not hesitant in holding that learned Tribunal has erred in law in allowing the appeal of the assessee. Therefore, the question mentioned above is answered in favour of the Revenue, and, the revision is allowed. The impugned order dated 30.09.1992 passed by the Tribunal is set aside.

(Prafulla C. Pant, J.)

Dt: 28.07.2005
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